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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
MICHAEL EDISON,
Defendant.

No. CR 07-0074 WHA

UNITED STATES' OPPOSITION TO
DEFENDANTS' MOTIONS TO QUASH
SUBPOENA

Date: January 15, 2008
Time: 2:00 p.m.
Court: Hon. William H. Alsup

UNITED STATES OF AMERICA,
Plaintiff,
v.
DEBRA EDISON,
Defendant.

No. CR 07-0479 WHA

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I. Introduction

Defendants Michael and Debra Edison have filed separate Motions to Quash the grand jury subpoena served upon Michael Thorman, Esq., (the “Motions”). The issues in the Motions overlap, so the United States responds and opposes both Motions herein. The government intends to question Mr. Thorman about communications with Michael and Debra Edison related to the origin and production of two purported loan documents produced to the United States during the discovery process in Michael Edison’s pending criminal case. The information sought by the Thorman subpoena is not covered by the attorney/client privilege. Nevertheless, in the event the Court finds that the Thorman subpoena seeks attorney/client information, the crime-fraud exception applies and the Motions should be denied.

II. Background Facts & Procedural Posture

On December 22, 2006, a complaint was filed against Michael Edison charging him with wire fraud in relation to his scheme to defraud Jean Phleger. The Honorable Bernard Zimmerman, U.S. Magistrate Judge, issued an arrest warrant for Michael Edison simultaneously with the complaint, and on February 10, 2007, he was arrested in Atlanta Georgia. The defendant demanded a detention hearing in Atlanta and was ordered detained and subsequently transferred to the Northern District of California. The defendant has been in U.S. Marshal custody since his arrest.

On February 13, 2007, a grand jury in the Northern District of California indicted Edison and he is charged by indictment in case CR07-0074 WHA with three counts of wire fraud stemming from his scheme to defraud Jean Phleger. As set forth in the indictment, the defendant essentially lied to Ms. Phleger about financial services he would purportedly perform for her. Instead, he gained access to Ms. Phleger’s personal and financial information and took out several loans in Ms. Phleger’s name against property she owned in San Francisco. The defendant then stole more than \$2,000,000 from Ms. Phleger by misappropriating proceeds from those loans for his own personal use. When Ms. Phleger and her representatives became suspicious of the defendant’s activities and inquired of the defendant regarding his handling of Ms. Phleger’s finances, the defendant fled his last known location and hid from Ms. Phleger. Ms. Phleger has

1 stated that she never gave Michael Edison permission to take her money or to do anything with it
2 other than pay her bills and make payments to certain family members.

3 On or about April 3, 2007, and while Michael Edison was in custody, the Alameda
4 County Sheriff's Office intercepted a letter from Michael Edison to his wife, Debra Edison.
5 Declaration of Mandy Britton, Exhibit A. The letter starts with the words "Read and Destroy."
6 The letter then begins "This letter is the 'most important thing I have Ever asked you to do.'"
7 Michael Edison advised Debra Edison "you must stay in Switzerland until we can determine it is
8 safe for you to return." In the letter, Michael Edison requested that Debra Edison assist him in
9 gathering documents that were stored in various places. Debra Edison was instructed to gain
10 control over certain documents and have them sent to her in Switzerland. Some of the
11 instructions Michael Edison gave Debra Edison are as follows:

- 12 • "We 'must' manage the release of the documents that are in the black suitcases –
13 some need to be destroyed and others worked on."
- 14 • While referring to documents they held in storage in New Jersey, Michael Edison
15 told her that there were three "larger boxes that Hold the most important Records
16 personal (sic) that we don't want 'anyone' to get." Edison told his wife "you can
17 send them slowly but you must get them out of their now."
- 18 • Michael Edison told Debra Edison that she would have to sort the files in order to
19 send documents back to the attorneys and that "How well we do this will spell the
20 difference between Jail & Freedom (sic) (emphasis in original)."

21 In the letter, Michael Edison also provided detailed instructions for Debra Edison to
22 create false documents to make it appear as if Jean Phleger loaned Edison the money he was
23 indicted for stealing. Specifically, Edison's letter told Debra Edison the following:

- 24 • "You 'must help me create' a Note that is missing from the files you have it is the
25 most important document and ill send in via separate over (sic) but you must
26 make sure it is created without any errors. Very Carefully follow the following . .
27 . Don't go near or ever talk to anyone about this"
- 28 • Michael Edison wrote detailed steps for Debra Edison to follow as she created this

1 document. The steps included instructions on what type font (new times roman)
2 to type the document in and what size paper to use. Edison also instructed Debra
3 Edison to find someone from "The Yellow Pages" to type the document. She was
4 instructed to not use any computer that they owned to create this document and
5 she was told to stand over the hired individual while the document was being
6 typed. Michael Edison told Debra Edison to pay cash, to obtain a copy of the
7 computer disk and to destroy the disk.

- 8 • Michael Edison told Debra Edison to have the hired individual run a completed
9 draft of the document on 9 ½" paper with his original signature at the bottom and
10 to use "the ten pages I am signing in blank." Debra Edison was told to "make
11 sure she gets the Note in such away that the text matches."
- 12 • Michael Edison instructed Debra Edison to make three copies once a good
13 original note was completed. She was then instructed to destroy the original, the
14 computer disk and any receipts for service.
- 15 • Edison then states: "All we need is a copy of the note and the memorandum which
16 I sent you earlier. Did you get it? If so tell me that Rosie's Had a Birthday on the
17 phone when it's done - then it needs to be put with some other files that we send
18 to the attorneys - send it with a bunch of other paper and let them find it by
19 themselves."

20 Michael Edison ended the text of his letter by writing "Please help me with this. It's the
21 only thing that will allow me to win this thing." Drafts of a handwritten Promissory Note and a
22 Memorandum purporting to document a loan from Jean Phleger to Michael Edison were included
23 with the letter. Both drafts were dated August 1, 2005. The Promissory Note stated that Michael
24 Edison promised to pay Phleger \$2,200,000 with interest accruing at eight percent. The principal
25 and interest were due on or before August 1, 2008. The note is signed only by Michael Edison.
26 On the bottom of the draft Promissory Note are the words "Make Sure Spelling is Correct Very
27 Important." The draft Memorandum is from Michael Edison to Jean Phleger. At the top of the
28 document it states "CHECK SPELLING & GRAMMAR." The document thanks Jean Phleger

1 for her support for the development stage of Michael Edison's technology investments.

2 On June 8, 2007, Michael Edison's then-attorney, Michael Thorman, told AUSA Jeffrey
3 Finigan and FBI Special Agent Mandy Britton that he obtained documents from Debra Edison
4 purportedly evidencing the fact that Michael Edison borrowed the money from Phleger that he
5 was indicted for stealing. Britton Dec., ¶3. Thorman stated that he had copies of a promissory
6 note and a memorandum of understanding. On June 21, 2007, Mr. Thorman produced a
7 Promissory Note and a Summary Memo of Loan Agreement Between Jean Phleger and Edison to
8 AUSA Finigan. Britton Dec., Exhibit B. The Promissory Note was dated August 1, 2005 and
9 was signed only by Michael Edison. The loan amount per the note was \$2,250,000. The
10 Summary Memo of Loan Agreement Between Jean Phleger and Michael Edison produced by
11 Thorman was dated August 2, 2005. The memo was signed only by Michael Edison.

12 On June 28, 2007, based on the intercepted letter and the documents from Mr. Thorman,
13 a complaint was filed against Debra Edison charging her with obstruction of justice in violation
14 18 U.S.C. § 1519. On July 24, 2007, Debra Edison waived indictment and was charged by
15 Information in case CR07-0479 WHA with one count of obstruction of justice.

16 On July 6, 2007, Mr. Thorman was served with a subpoena to testify before the grand
17 jury. Mr. Thorman subsequently moved to withdraw from representing Michael Edison due to
18 the obvious conflict of interest that developed when Michael and Debra Edison used Mr.
19 Thorman to produce fraudulent documents to the United States during discovery in an attempt to
20 obstruct justice by making it appear as if the victim loaned Michael Edison the money he stole
21 from her. This Court granted Mr. Thorman's motion to withdraw on December 11, 2007. Mr.
22 Thorman was scheduled to appear before the grand jury on December 18, 2007, but that
23 appearance has been postponed pending the dispositions of the Motions.

24 On December 18, 2007, and in light of the declarations filed in support of the Motions,
25 Agent Britton and AUSA Finigan interviewed Mr. Thorman. Mr. Thorman stated that he had a
26 fee agreement with Michael Edison only and that Debra Edison was never his client. Mr.
27 Thorman also stated that he never advised or instructed Debra Edison to create any documents.
28 He only asked her to send documents to him that allegedly already existed at the time he dealt

1 with her. Britton Dec., ¶4.

2 **III. Argument**

3 Michael Edison's Motion argues that the Thorman subpoena should be quashed because
4 it seeks information protected by the attorney/client privilege and work product doctrine. He
5 includes communications between Mr. Thorman and his wife Debra Edison under the theory that
6 she was acting as his agent. Debra Edison's Motion is based upon her claimed reasonable belief
7 that an attorney/client relationship existed between her and Mr. Thorman. The Motions lack any
8 legal or factual support and should be denied for several reasons: (1) there was no attorney/client
9 relationship between Debra Edison and Mr. Thorman; (2) Michael Edison's communications
10 with Mr. Thorman regarding the origin and production of the purported loan documents were not
11 made for the purpose of seeking legal advice and are therefore not protected by the
12 attorney/client privilege; (3) the work-product doctrine is inapplicable because communications
13 related to the origin and production of the documents do not qualify as work-product; (4) any
14 privilege related to work-product was waived when the documents at issue were voluntarily
15 produced; and (5) since any attorney/client communications related to the documents were in
16 furtherance of the Edisons' scheme to obstruct justice, the crime-fraud exception applies and the
17 protection of the privilege is unavailable.

18 **A. Debra Edison fails to meet her burden of proof that the attorney/client privilege**
19 **applies to her communications with her husband's attorney, Mr. Thorman.**

20 Debra Edison's Motion claims the Thorman subpoena should be quashed because she
21 allegedly had a "reasonable expectation of confidentiality" in her communications with Mr.
22 Thorman so that the attorney/client privilege, work-product doctrine, and some vague, undefined
23 "duty of loyalty," therefore prohibit his testimony. But for this false claim of an attorney/client
24 relationship, Debra Edison would lack standing to challenge the Thorman subpoena and the
25 Motion should be denied.

26 The burden of establishing the existence of an attorney/client privilege always rests with
27 the proponent of the privilege. *United States v. Abrahams*, 905 F.2d 1276, 1283 (9th Cir. 1990).
28 The privilege applies "only if the party claiming the privilege is or sought to become a client."

1 *United States v. Layton*, 855 F.2d 1388 (9th Cir. 1988); citing *United States v. Keplinger*, 776 F.2d
 2 678 (7th Cir. 1985). An attorney/client relationship requires the proponent to manifest an intent
 3 to seek counsel and a person's "subjective belief" that a conversation is privileged is not by itself
 4 sufficient to establish the privilege. *Keplinger*, 776 F.2d at 700.

5 Debra Edison fails to state any credible facts establishing a reasonable basis to believe
 6 Mr. Thorman was acting as her attorney. There is no evidence she was or sought to become Mr.
 7 Thorman's client. According to her, the following factors form the basis for her alleged
 8 reasonable belief that an attorney/client relationship existed between her and Mr. Thorman:

- 9 • she conferred with Mr. Thorman privately on a regular basis regarding both the
 10 civil and criminal matters in which Michael Edison was named (Debra Edison
 11 was not named in any of them);
- 12 • she understood that an "adverse finding" against Michael Edison in any of his
 13 actions would subject her to "personal and financial consequences"; and
- 14 • it was her "expectation that Mr. Thorman provided legal counsel for the benefit of
 15 the marital community."

16 Motion by Debra Edison at 5. Mr. Thorman's perception of his relationship with Debra Edison
 17 is markedly different:

- 18 • Mr. Thorman had a fee agreement with Michael Edison only;
- 19 • Mr. Thorman never advised Debra Edison he was her attorney;
- 20 • Mr. Thorman never even met Debra Edison in person until after she produced the
 21 purported loan documents to him;
- 22 • Mr. Thorman did not consider Debra Edison to be his client; and
- 23 • Mr. Thorman did not represent Michael Edison in his civil matters.

24 There are no facts in the record justifying a reasonable belief that Mr. Thorman was
 25 acting as Debra Edison's attorney.¹ In *Keplinger*, the Seventh Circuit declined to recognize an
 26

27 ¹ The caveat here is that the government is not privy to Debra Edison's Second
 28 Declaration.

1 attorney/client relationship because the facts did not establish a reasonable basis for believing
2 one existed:

3 The district court here found that defendants had failed to demonstrate the
4 existence of several necessary requirements for creation of individual attorney-
5 client relationships between themselves and the IBT corporate attorneys. In
6 particular, the court found that no express agreement for individual representation
7 was made, nor did any of the defendants ever ask the attorneys directly or
8 indirectly to represent him individually. In addition, the court found that the
9 circumstances were not such as to support a finding of any implied individual
10 representation. The defendants never sought individual legal advice or asked
questions relating to personal representation, and, quite importantly, never made
any confidential statements of an incriminating nature to the attorneys, from
which it could be inferred that the defendants believed that the attorneys were
representing them individually. Neither attorney believed they represented the
defendants individually, nor did they believe the defendants thought they enjoyed
such representation. *Id.*

11 Likewise, there is no evidence of Debra Edison manifesting an intent to have Mr. Thorman act as
12 her counsel with respect to her involvement with producing the purported loan documents. For
13 example, there are no facts showing that any of Debra Edison's conferences were for the purpose
14 of seeking "legal advice" versus simply obtaining updates as to her husband's status. *Griffith v.*
15 *Davis*, 161 F.R.D. 687, 694 (C.D. Cal. 1995) ("Because the attorney-client privilege withholds
16 relevant information from the fact-finder, it protects only those disclosures-necessary to obtain
17 informed legal advice-which might not have been made absent the privilege. As stated by the
18 Ninth Circuit, the attorney-client privilege should apply only when necessary to effectuate its
19 limited purpose of encouraging complete disclosure by the client."). Thus, similar to the Seventh
20 Circuit in *Keplinger*, this Court should decline to find a basis for an attorney/client privilege
21 covering communications between Debra Edison and Mr. Thorman related to the origin and
22 production of the two purported loan documents.

23 Further, Debra Edison's position leads to at least two very illogical conclusions. Her
24 theory would mean that Mr. Edison's children, wherever they are located, can also invoke the
25 attorney/client privilege with respect to Mr. Thorman's communications because, as Mr.
26 Edison's potential heirs, Mr. Thorman must be providing legal counsel for the "familial
27 community." Her argument also leads to the illogical conclusion that every husband and wife in
28 California now possesses a reasonable expectation of an attorney/client relationship with the

1 attorney for his or her spouse because “adverse findings” can subject the “marital community” to
2 negative consequences. These absurd results are obviously not the law and they underscore the
3 specious nature of Debra Edison’s Motion.

4 After creating an alleged belief about Mr. Thorman, Debra Edison then attempts to
5 manufacture reasonableness by placing her claimed belief against the backdrop of California
6 community property law. Debra Edison Motion 5-6. This argument is blatantly misleading
7 because the Edisons do not reside in California and have no assets. The only reason they are here
8 is because they defrauded a resident of the NDCA and Michael Edison has been declared a
9 significant flight risk. Further, both of the Edisons have court-appointed counsel based upon
10 sworn affidavits that they do not have any resources to pay for counsel. It is impossible for this
11 “California community property theory” to form the basis of Debra Edison’s alleged reasonable
12 expectation that her communications with Mr. Thorman were covered by the attorney/client
13 privilege. The Court should summarily reject this contrived argument and deny Debra Edison’s
14 Motion.

15 **B. Michael Edison fails to meet his burden of proof that his communications with Mr.**
16 **Thorman regarding the origin and production of the purported loan documents was**
17 **for the purpose of obtaining legal advice and they are therefore not protected by the**
attorney/client privilege.

18 Just like Debra Edison, Michael Edison has the burden of establishing each element of
19 the attorney/client communication in order for the privilege to apply. The first element is that the
20 communication was made in order to seek legal advice. *Davis, supra*, 161 F.R.D. at 694.
21 Michael Edison has not filed a declaration setting forth any facts in support of this element and
22 his Motion must be denied. As the record stands, the only role Mr. Thorman played in this
23 process was to simply ask Debra Edison to send him documents that Michael Edison falsely
24 advised him already existed. Michael Edison apparently told Mr. Thorman that the documents
25 existed and that Debra Edison would locate them for Mr. Thorman. He did not communicate
26 with Mr. Thorman about these documents to obtain any legal advice and Michael Edison’s
27 Motion should be denied.

C. Information from Mr. Thorman related to the origin and production of the two purported loan documents is not protected by the work-product doctrine because the documents were not created in anticipation of litigation and that privilege was waived once the documents were produced.

Communications between Mr. Thorman and the Edisons related to the two purported loan documents do not constitute work-product. The defendants bear the initial burden of establishing the doctrine applies and both defendants have conceded – as they must – that the two purported loan documents are not work-product because, at least ostensibly, they were not prepared in anticipation of litigation. *In re Grand Jury Subpoena (Mark Torf/Torf Environmental Management)*, 357 F.3d 900 (9th Cir. 2004) (documents at issue were created by investigator at direction of attorney in anticipation of litigation). Mr. Thorman has likewise stated that he never instructed Michael or Debra Edison to create the documents. The work-product doctrine protects “documents and tangible things.” *Id.*, at 906. If the documents at issue are not work-product, it necessarily follows that communications about the origin and production of those documents can not be work-product either. The only non-documentary or intangible matters covered by the work-product doctrine are: “the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.” Fed. Rule Civil Proc. 26(b)(3)(B); *see also Mark Torf*, 357 F.3d at 906. Mr. Thorman’s communications with the Edisons about the origin and production of the purported loan documents do not constitute Mr. Thorman’s mental impressions, conclusions, opinions, or legal theories concerning Michael Edison’s case.

Further, even if the Court somehow found the two purported loan documents to constitute work-product, the privilege related to those documents was waived once they were voluntarily produced. *United States v. Salsedo*, 607 F.2d 318, 320-321 (9th Cir. 1979) (once counsel produces a document to an adversary or makes use of a document in litigation, any work-product privilege related to the document is waived). Accordingly, the defense can not logically or legally produce fraudulent documents via Mr. Thorman and then invoke the work-product doctrine to prevent the United States from determining the facts surrounding the origin and production of those documents by questioning Mr. Thorman on those topics.

D. The crime-fraud exception to the attorney/client privilege applies because the Edisons were engaged in a scheme to obstruct justice and used Mr. Thorman in furtherance of that scheme.

Even if the Court finds that communications between Michael and/or Debra Edison and Mr. Thorman are covered by the attorney/client privilege, they are nevertheless discoverable pursuant to the crime-fraud exception because they were in furtherance of criminal activity, i.e. obstructing justice by creating false documents in support of Michael Edison's bogus defense to the wire fraud charges. *In re Grand Jury Proceedings*, 87 F.3d 377 (9th Cir. 1996).

The applicable rule is simple: "To invoke the crime-fraud exception . . . the government ' has the burden of making a prima facie showing that the communications were in furtherance of an intended or present illegality . . . and that there is some relationship between the communications and the illegality." *Id.*, at 380. This Court must simply find "reasonable cause to believe that the attorney's services were utilized . . . in furtherance of the ongoing unlawful scheme . . . it is enough that the communication furthered, or was intended by the client to further, that illegality." *Id.*, at 381. The government is not required to prove that the communications in fact helped commit the crime, but only that there is reasonable cause to believe that they merely "relate" to the crime. *Id.*, at 382-383.

Applying this well-established rule to the facts of this case could not be more straightforward. Michael Edison stands accused of defrauding Jean Phleger of more than \$2,000,000, and while in custody on those charges he instructed his wife, Debra Edison, to create false documents making it appear as if Jean Phleger loaned Michael Edison the money he defrauded her of. Shortly after Michael Edison issued those instructions to Debra Edison, she produced the exact documents he instructed her to create to Mr. Thorman, who was Michael Edison's attorney at the time. Mr. Thorman then appropriately produced the documents to the United States during the discovery process.² "The protection afforded by the attorney-client privilege does not extend to any communication 'in furtherance of intended, or present,

² Although irrelevant, there is no evidence of any complicity by Mr. Thorman in the Edisons scheme to obstruct justice. 87 F.3d at 381-382.

1 continuing illegality.” *Id.*, at 381 (emphasis added).

2 In *In re Grand Jury Proceedings*, the government was investigating a corporation for
3 immigration and tax crimes and served grand jury subpoenas on two of the corporation’s
4 attorneys to answer questions about communications with corporate personnel regarding the
5 employment status and compensation of a certain employee. *Id.*, at 379. The corporation moved
6 to quash the subpoenas, invoking the attorney/client privilege and the attorney work-product
7 doctrine. *Id.* Once the government met its burden of showing that the legal advice of the two
8 attorneys was sought in furtherance of, and was sufficiently related to, ongoing immigration and
9 tax crimes, the Ninth Circuit denied the motion to quash. *Id.* Likewise, the government has met
10 its burden and the Edisons can not credibly rebut it. Accordingly, any communications between
11 Mr. Thorman and the Edisons related to the two false loan documents are no longer protected by
12 the attorney/client privilege.

13 Michael Edison’s argument that the crime-fraud exception only applies in instances
14 where the attorney is “retained” with the intent to commit a crime and that his situation is
15 distinguishable because he allegedly retained Mr. Thorman prior to concocting his scheme to
16 obstruct justice is both illogical and without legal support. First, taking that argument to its
17 logical conclusion would mean that any defendant could use an attorney’s services to commit
18 crimes as long as s/he did so after the initial and innocent retention of the attorney. That
19 argument is a fallacy and it requires no further comment other than to note that none of the cases
20 cited by Edison support his argument. Second, as stated above, in *In re Grand Jury Proceedings*,
21 the Ninth Circuit stated that “any” communication in furtherance of a crime is stripped of
22 attorney/client privilege protection. The Ninth Circuit did not confine its ruling to
23 communication made during the retention process. Third, the attorneys subpoenaed in *In re*
24 *Grand Jury Proceedings* were corporate attorneys who were not retained by the corporation,
25 which clearly supports the theory that communications made in furtherance of criminal activity,
26 regardless of when they are made during the attorney/client relationship, are subject to the crime-
27 fraud exception. The Ninth Circuit does not recognize Michael Edison’s novel theory.

1 **IV. Speedy Trial Act Status**

2 All time has been excluded as to both defendants by stipulation and order pursuant to 18
3 U.S.C. § 3161(h)(8)(B)(iv). Thus, no days have elapsed on the speedy trial clock for either
4 defendant and seventy (70) days will remain as of the date of disposition of the Motions.

5 **V. Conclusion**

6 None of the communications between the Edisons and Mr. Thorman related to the origin
7 and production of the two purported loan documents are covered by the attorney/client privilege
8 or the work-product doctrine. Alternatively, even if the Court finds some or all of the
9 communications were so covered, the crime-fraud exception applies and they are discoverable.
10 Indeed, one would be hard-pressed to envision a situation more appropriate for the crime-fraud
11 exception. The government respectfully requests that the Court deny the Motions.

12
13 DATED: December 28, 2007

Respectfully submitted,

14 SCOTT N. SCHOOLS
15 United States Attorney

16 /s/
17 _____
JEFFREY R. FINIGAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the office of the United States Attorney, Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned certifies that he caused copies of

**UNITED STATES' OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH
SUBPOENA and DECLARATION OF MANDY BRITTON IN SUPPORT OF UNITED
STATES' OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH SUBPOENA**

in the cases of U.S. v. MICHAEL EDISON and DEBRA EDISON, No. CR-07-0074 WHA,
No. CR-07-0479 WHA

to be served on the parties in this action, addressed as follows which are the last known
addresses:

Richard Mazer

Law Offices Of Richard B. Mazer
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San Francisco, CA 94117

Roger William Patton

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____ (By Personal Service), I caused such envelope to be delivered by hand to the person or
offices of each addressee(s) above.

____ (By Facsimile), I caused each such document to be sent by Facsimile to the person or
offices of each addressee(s) above.

____ (By Mail), I caused each such envelope, with postage thereon fully prepaid, to be placed
in the United States mail at San Francisco, California.

X (By Fed Ex), I caused each such envelope to be delivered by FED EX to the address
listed above.

I declare under penalty of perjury that the foregoing is true and correct.

December 28, 2007

/s/

WILSON WONG

United States Attorney's Office